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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,387

09/12/2005

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT

PAPER NUMBER

3742

NOTIFICATION DATE

DELIVERY MODE

01/14/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary	Application No. 10/529,387	Applicant(s) UMIT ET AL.	
	Examiner Joseph M. Pelham	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-29 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/20/08</u> . | 6) <input type="checkbox"/> Other: _____ |

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The amendment filed 9/22/08 and IDS filed 10/20/08 are acknowledged. Claims 1-29 remain pending. An updated search and review of the claims determined new grounds for rejection, and the examiner sincerely regrets any inconvenience.

Claim Rejections - 35 USC § 112

Claims 2, 8, 13-15, and 18-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of claims 2, 19, and 21 recites “a cold accumulator,” which is contrary to the nature of the contemplated device and, moreover, to natural law, rendering the claim unclear at best, and in fact inoperable. Since the contemplated fluid acts as a coolant, which function is accomplished by *absorbing* heat energy, it is “a *heat* accumulator” (or *heat sink*). A “cold accumulator,” if such a device were possible, would accumulate “cold” and leave higher temperatures behind.

Claim 13, lines 1-2, and claim 18, lines 3-4, recite “the heating element... provided, at a lower end,” which is indefinite since no structure has been recited to establish the existence, and thus the meaning, of upper or lower “ends.”

In each of claims 8, 19, and 26 (as discussed in the previous Office action), “substantially parallel to/with the central body” is indefinite because the structure of the “central body” has not been defined in such a way as to establish a geometrical orientation, i.e., its structure identifiable with a unique plane or unique line (axis) characteristic of the “central body,” sufficient to endow the recited *geometrical relation of parallelism* with meaning. See *Response to Arguments* below.

Claim 19, line 5, recites “a same cooled medium,” which lacks antecedent basis (this is recited only in claim 22, which *depends from* claim 19).

In claim 26, line 2, “is at two” is either missing text, perhaps the word “least,” or has text that should be omitted, perhaps “at,” rendering the claim unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 3339480.

Referring to Figs. 1 & 2, and col. 2, lines 6-64, and since "cool" is a strictly relative term, US'480 discloses the device substantially as claimed, including a motorized, hollow spit 15, with a "delivery channel" 17 through which fluid, a "heat accumulator," from reservoir 30 flows, having a cooling effect since reservoir 30 is outside the heated region, the reservoir 30 acting as a "heat exchanger" (claim 4) since it absorbs and emits heat energy, and "radially oriented," "outlet openings" 17 which are also "delivery channels," through which the fluid can pass into the natural "channels" in the "foodstuffs" A. Cap 50 is the recited "cooling element" at a "radial spacing," "substantially parallel to, and removably coupled to the "central body, since the plane characteristic of cap 50 can be said to be parallel to spit 15, the cooling element 50 has a channel 61 through which a cooled medium flows, albeit in very small quantities since ball 70 prevents a large flow rate

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 4663517.

Referring to Figs. 1-4 & 7, and col. 3, lines 49-68, US'517 discloses a rotating spit 38, a heating element 28 mounted at a "lower end" to an "upper branch" 68 of a U-shaped holder 32 provided beneath the "foodstuffs."

Claims 19-27 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 4190100.

Referring to Fig. 3, US'100 discloses a "central body" 11 with a delivery 26 and removal 28 channels for a coolant, a heat exchanger 7, a parallel cooling element 11 removably coupled to the central body (any of the other removable "needles"), as claimed.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The "central body" of US'100 is clearly capable of supporting foodstuffs.

Claim Rejections - 35 USC § 103

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Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US'480 in view of US Pat. 4810856.

The claim differs from US'856 only in calling for a cooling element parallel to the central body. US'856 discloses, at Fig. 1, a cooling element 33 parallel to a central body 5. Since elements 33 are metallic and would be attached to cooled body 15 of US'480, elements 33 would also absorb heat energy and thus function as "cooling elements."

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'480 in view of US'517.

The claim differs from US'856 only in calling for a device to which the heating element can be secured "pivotably and displaceably" to an "upper branch" of a "U-shaped" holder." US'517 discloses, at Figs. 1-3, a device 32 to which the heating element is secured "pivotably and displaceably to U-shaped element 32 by means of "device" 26. Clearly the heater can be removed, either with or without tools. The heater has a pivotal connection 26 with element 32, and is displaceable by the movement of element 32, meeting the claim limitation. When element 32 is rotated to adjust the heater position, the heater and U-shaped holder 32 assume a position in which the heater is secured to "an upper branch" of the holder, as claimed.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'480 in view of US'639.

The claim differs from US'856 only in calling for a refrigeration counter beneath the oven. However, US'639 discloses a refrigeration counter onto which the cooking device could be placed, in which case the counter "receives a heat exchanger." It would have been obvious to place the cooking device of US'480 on the counter surface of US'639, to provide a cooled surface on which to keep the uncooked meats over the course of a long afternoon cookout.

Allowable Subject Matter

Claim 11 is objected to as being dependent upon a rejected base claim, but *would appear to be* allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 28 and 29, which have not been the subject of prior art rejections, depend from claim 19, which suffers from indefiniteness sufficiently extensive to preclude confidence that claims 28 and 29 would be allowable if the 35 USC 112 rejection were overcome, since the scope of claim 19 would be expected to change substantially.

Response to Arguments

Applicant's arguments filed 9/22/08, with respect to the 35 USC 112 rejection of the "substantially parallel to the central body" limitation have been fully considered but they are not persuasive.

Applicant states that "the orientation of the central body is irrelevant and can be in any direction. The claim only recites the relationship between the cooling element oriented... parallel to the central body." (Page 9) The rejected, now restated with presumably more clarity, referred to the this "relationship" of parallelism, which is definite and meaningful only if the two structural elements at issue are each identifiable with a characteristic plane or line.

Applicant's arguments with respect to prior art rejection of claims 1-10, 12, and 13-17 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 9/22/08, with respect to the rejection of claim 18 over US'517 (Huff) have been fully considered but they are not persuasive.

Applicant argues that US'517 does not show "a heating element being provided, at a lower end, with a device by which it is secured pivotably and displaceably on a U-shaped holder on one side, with its lower end on an upper branch of the holder and the upper branch of the holder being provided underneath the foodstuffs," and that heating element 28 is not "mounted at a lower end to an upper branch 68 of a U-shaped holder 32... Instead, as disclosed at col. 3, lines 55-58, the electric heating element 28 is connected and supported by a bracket 26. The bracket 26, in turn, is spot welded to the holder 32." (page 12 of the Response).

As discussed above, the heating element 28 of US'517 is secured "pivotably and displaceably to U-shaped element 32 by means of "device" 26. The heater has a pivotal connection 26 with element 32, and is displaceable by the movement of element 32. When element 32 is rotated to adjust the heater position, the heater and U-shaped holder 32 assume a position in which the heater is secured to "an upper branch" of the holder.

The examiner urges Applicant to take note that the claim specifically recites that the heater is secured to the holder "with a device." The "device" is elements 26.

Applicant's arguments filed 9/22/08, with respect to the rejection of claims 19-24 (now 19-27) over US'100 (Wallace) have been fully considered but they are not persuasive.

.Applicant asserts, without explanation, that US'100 does not disclose a central body "with inlet and outlet lines connected to at least one cooling element running... parallel to with the central body." Referring to Fig. 3, US'100 discloses a central body (any one of the "needles") "with inlet and outlet lines connected to at least one cooling

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element running... parallel to with the central body” (any other “needle” with inlet and outlet lines, sharing the same cooling medium), exactly as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph M. Pelham/
Primary Examiner, Art Unit 3742
1/9/09